



CITY OF KIRKLAND

Department of Finance and Administration

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www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Tracey Dunlap, Director of Finance & Administration
Barry Scott, Purchasing Agent

Date: January 6, 2010

Subject: PROVIDING LOCAL PREFERENCE FOR CITY PURCHASING

RECOMMENDATION:

It is recommended that the City continue to encourage local businesses to actively compete for the City's business, but that the City not adopt a policy providing preference to local businesses when purchasing goods and services.

BACKGROUND AND DISCUSSION:

What we have been doing:

The question of providing a preference to local businesses was last raised at the time the purchasing ordinance (KMC 3.85) was revised in 2007. At that time, it was determined that we should actively work to encourage local suppliers, contractors and consultants to compete for the City's business. Toward that end, we have done the following:

1. Updated the City's Purchasing webpages to better inform suppliers, contractors and consultants as to how the City does business and how they can sign up to be on City rosters (Sample Attachment A).
2. Updated City business license forms to include information on how to register on Shared Procurement Portal rosters used by the City.
3. Mailed cards to local City business license holders that encouraged them to register on appropriate City rosters and offering them the opportunity to attend a City workshop. (Note that we solicited quotes to print the cards, and the successful quote was submitted by Minuteman Press of Kirkland.)
4. Conducted two workshops on "Doing Business with the City."

Recently, a contract was awarded for the services of a Business Retention Consultant. The scope of work for this consultant includes conducting workshops for new and existing Kirkland businesses. We have requested that these workshops include information on how to pursue business opportunities with the City.

The use of City Visa Purchasing Cards has made it easier for City employees to do business with local merchants that would not normally accept purchase orders. In 2009, there were 933 City Visa card transactions with Kirkland merchants that totaled \$43,478.

Adopting a Local Preference Purchasing Policy:

The City Attorney's Office has previously looked into the legality of the City providing a preference to local businesses when purchasing goods and services. Assistant City Attorney Bill Evans researched the issue and responded with a recommendation (Attachment B) against pursuing such a policy due to the direction given by the State Auditor's Office that:

"State law does not recognize, and implicitly prohibits, granting of preferences to local vendors in purchases of goods, supplies and services by local governments. (If an entity can justify imposing a requirement of local availability of a product, the requirement should be made a part of the bid specifications rather than being a factor in choosing bidders.)"

For the preparation of this report, the City Attorney's Office has reviewed this issue again, and has determined that nothing has changed.

The Municipal Research and Services Center of Washington (MRSC) has also researched the subject and reached the same conclusion (Attachment C). However, the MRSC did note one exception found in RCW 39.30.040. This RCW allows for a city to consider sales and B&O tax revenues when evaluating bids for supplies, materials or equipment to determine the low bidder, which would in essence serve as a tie-breaker. The RCW does not apply to public works contracting.

The bids have to be very close for the tax revenues provided by a local business to make a difference in determining the low bidder given, that Kirkland's share of the sales tax is only 0.85% of the 9.5% sales tax and we do not impose a B&O tax. The City has tried to apply this option on several occasions when considering close bids, but the consideration of local sales tax revenue has not been enough to change the outcome in determining the low bidder.

Beyond the issue of legality, there are other reasons to recommend against adopting a policy to provide preference to local businesses when awarding contracts. For example, federal regulations prohibit the granting of some federal funds to entities that have adopted a local preference policy as part of their bidding procedures. The National Institute of Governmental Purchasing (NIGP) has taken a position opposing the adoption of local preference purchasing policies for additional reasons (Attachment D).

If the City were to further pursue adopting a local preference purchasing policy within these constraints, the matter of defining a "local" business would have to be given careful consideration. Attachment E lists a number of the questions to be considered in defining a local business.

To provide some context for this discussion, the following information on the 2009 City expenditures through Accounts Payable is provided. The table below summarizes the City's total expenditures for goods and services. Those expenditures for Public Works projects are identified separately, as they are subject to bid laws which would not permit a local preference.

| | |
|---|----------------|
| Total Expenditures through Accounts Payable | \$49,022,371 |
| Less Expenditures made for Public Work Projects | (\$17,060,588) |
| Total Expenditures for other Goods & Services | \$31,961,783 |

January 12, 2010

Page 3

The only basis readily available to determine current purchases in Kirkland is payments made to Kirkland zip codes. These expenditures are summarized below:

| | |
|---|---------------|
| Total Expenditures through Accounts Payable to Kirkland zip codes | \$13,424,875 |
| Less Expenditures paid to City of Kirkland for internal transactions, utility bills, etc. | (\$2,411,448) |
| Less Expenditures to Waste Management for Solid Waste Management Contract | (\$7,447,776) |
| Net Expenditures to Kirkland zip codes | \$3,565,651 |

The expenditures to the City of Kirkland and to Waste Management for the garbage contract are identified separately because they do not represent retail transactions. The net amount, \$3.6 million, approximates the City's local purchases in 2009.

SUMMARY:

A recent inquiry sent to the members of the Pacific Northwest Public Purchasing Association revealed that Spokane County, Pierce County the City of Yakima and the City of Everett have all considered implementing a local preference purchasing policy. For all of the reasons stated above, they have decided against adopting such a policy.

Based on all of these considerations, staff recommends against pursuing a formal policy but will continue outreach to the local business community to encourage participation in the City's purchasing processes. The Council might also consider pursuing legislative options to change the current statutory environment to provide more latitude in applying local preferences.



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How does a supplier, contractor or consultant register for an opportunity to do business with City?

The City of Kirkland participates in the [Shared Procurement Portal](#) administered by the [eCity Gov Alliance](#). The Shared Procurement Portal website provides the opportunity for suppliers, contractors and consultants to register on rosters used by the City of Kirkland and other agencies to locate and notify businesses of upcoming opportunities.

You can go to the Shared Procurement Portal's [Roster Information](#) webpage to determine the roster most appropriate for your business.

Suppliers, Contractors and Consultants are always welcome to visit the City's [Doing Business with the City](#) webpage where solicitations for bids, proposals and consultants' qualifications are posted.

Finally, companies interested in doing business with the City can contact Purchasing Services to request additional information on any upcoming opportunities:

Phone: 425-587-3120

E-mail: purchasing@ci.kirkland.wa.us

Does the City have a preference for doing business with Kirkland based companies?

While the City cannot legally adopt a program that provides a preference for Kirkland based companies, we do enjoy doing business with local companies and encourage them to compete for the City's business.

Kirkland companies that wish to do business with the City of Kirkland should register on the appropriate roster as described in the previous question and monitor the [Doing Business with the City](#) webpage for new business opportunities.

What kind of goods and services are used by the City?

In order to provide the many services that it does to residents and visitors alike, the City purchases a wide variety of goods and services.

Goods and services are broken down into the following general categories:

- *Consumable supplies:* Products that have a one-time life cycle. Typical examples are paper products, miscellaneous office supplies, cleaning supplies and fuel.

CITY OF KIRKLAND

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**CITY ATTORNEY'S OFFICE
MEMORANDUM**

To: Gwen Chapman, Financial Operations Manager
Barry Scott, Purchasing Agent

From: Wm. R. Evans, Assistant City Attorney

Date: September 29, 2006

Subject: Local Purchasing Preference

ISSUE

May a municipality adopt a provision in its purchasing code that provides a preference to local businesses when considering or awarding contracts for public purchases?

DISCUSSION

The Washington case law I have reviewed does not provide a clear answer to this question. The issue is further complicated by the Commerce Clause to the U.S Constitution if the non-local vendor also happens to be out of state. However, the Washington State Auditor's Office has reached a conclusion in this regard under Washington law, which it addresses as follows:

State law does not recognize, and implicitly prohibits, granting of preferences to local vendors in purchases of goods, supplies and services by local governments. (If an entity can justify imposing a requirement of local availability of a product, the requirement should be made a part of the bid specifications rather than being a factor in choosing bidders.)"

Washington State Auditor's Office, *Competitive Bid laws*, 2005, pg. 12.

Based on the foregoing Auditor's position and the lack of any clear direction to the contrary, I would recommend the City not adopt any kind of local preference provision in its purchasing code.

Attachment C

From the Municipal Research and Services Center:

1. Local Preference - May a county or city grant a preference for bids submitted by local vendors or contractors?

A county or city may not grant a local preference for bidders unless there is specific authorization in state law for granting the preference. There is only one preference authorized in state law in relation to the bid law. [RCW 39.30.040](#) was enacted in 1985 and provides that whenever a city or county is required to make purchases from the lowest responsible bidder, it can take into consideration tax revenue it would receive from purchasing the supplies from a source located within the jurisdiction. Tax revenues that may be considered include sales taxes and business and occupation taxes. This preference only applies to purchases of supplies, materials, and equipment, not public works contracts.

Attachment D

National Institute of Governmental Purchasers (NIGP): An excerpt from NIGP Basic Purchasing Manual states the following:

"Local preference takes several forms; the most prevalent form is the percentage preference. Eleven states still have local-preference laws. Percentage preferences of 1.5% to 10% are given to those eleven states in bid-price competition with out-of-state firms. But what if we were required to give percentage preferences to minority firms? To union shops? To small businesses? To other special-interest groups? The effect is the same: When a percentage preference is given to local businesses, it is given at the added expense of all taxpayers.

The advantages of having local-preference policies are limited and are far outweighed by the disadvantages. Vendors like to say that a local-preference policy will attract many new businesses into a community and thereby will increase the tax base. This idea is a fallacy.

Here are a few of the disadvantages of having local-preference policies:

1. The cost of goods or services are (sic) increased for all taxpayers when a percentage differential is allowed. This practice discourages outside firms that would normally compete and keep the local fellows "honest."

2. Local-preference laws and policies are a barrier to interstate commerce. When these laws have been tested in courts of Illinois, California, New York, and Georgia, they have been held to be unconstitutional.

3. Local-preference laws invite reciprocity. In at least one state, the purchasing authority is prohibited from doing business with any firm located in a state that has local-preference laws or policies.

Those business people who wish to push for local-preference laws should be made aware that they could face the possibility of retribution from other jurisdictions.

Also, preferences given to local businesses by purchasers could easily be looked upon as a subsidy to a firm that is too weak in its own operations to compete on an even, equitable basis."

The NIGP also indicates:

"Although some people assert that buy-local preferences will protect existing jobs, create new jobs, and strengthen the economy, the sad reality is that the practice of favoring vendors within a defined geographical area only encourages inflated prices which are paid by the taxpayers of the jurisdiction who administer them. By causing prices to rise, preference results in a direct subsidy to a few taxpayers at the expense of the general taxpaying public. When an agency has a preference, [ed., then] potential, reliable and sound vendors consider it futile to bid in such a climate. When they do not bid, competition becomes less keen and prices rise."

COMPLEXITIES IN DEFINING A “LOCAL VENDOR”

1. The definition and application of “local” is subject to legal challenge.
2. Would a “Local Vendor” be one which is located anywhere within the City boundaries?
3. Would a “Local Vendor” be a taxpayer living within the City but who owns a business located outside of the City boundaries?
4. Must the business own property within the City’s boundaries?
5. How long must a business be established within the City to qualify? What if a vendor from outside the City’s boundaries “set up shop” just to submit a bid?
6. Does the home of a sales representative within the City boundaries qualify as a local vendor?
7. Does making payments to a company’s remit-to address which is outside of the City boundaries disqualify them as a “Local Vendor?”
8. If a business is owned from outside of the City boundaries will they be allowed to bid? Should the ownership of a business be “Local” to qualify?
9. Should the business have paid local City property taxes or other taxes to qualify?
10. Should a warehouse, distribution center or a small branch office qualify a firm as local?